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Advisory Council
on the Status of
Women

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SUBMISSION TO THE NOVA SCOTIA PAY EQUITY COMMISSION

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INTRODUCTION

This report addresses both issues raised by the Pay Equity Commission in its call for submissions, namely:

1) implementing pay equity in the private sector, and
2) making the current pay equity process more comprehensive.

The Nova Scotia Advisory Council on the Status of Women believes that both issues can and must be dealt with in the same piece of legislation. This report recommends changes to the current pay equity legislation that the Advisory Council considers vital to achieving real pay equity in both the public and private sectors. As well, the report contains specific recommendations that address the remedial action necessary in the public sector, while further defining the anticipated authority and responsibilities of the Pay Equity Commission.

OVERVIEW

The Advisory Council congratulates the Government of Nova Scotia on its commitment to introduce pay equity legislation for the private sector by the 1992 session of the House of Assembly. We are also pleased that the Pay Equity Commission's call for submissions includes an opportunity to review and re-address the pay equity process in the public sector. We trust that the purpose of this call for submissions is not an invitation to re-open debate on the principle of pay equity itself, but rather will be used to develop guidelines for devising a comprehensive system of implementation.

We are concerned, however, that the Government has backed away from the general principle of eliminating historical and

systemic pay discrimination against women. Instead of using job content as a primary focus for comparison, the current legislation concentrates on gender predominance. Instead of a basic labour standard accessible to individuals and groups alike, pay equity has been held out as a remedy available only in limited circumstances to limited types of occupations.

The Advisory Council is concerned that, as the process is now understood, methods of implementing pay equity will continue to undermine its general principles. Helen Remick, a noted American authority, warns that "policies purporting to mandate comparable worth can be gutted by seemingly neutral technical decisions."[1] Pay equity can be rendered meaningless if definitions are narrow, coverage restricted, bases for comparison limited, enforcement strategies outmoded, or resources for implementation and enforcement in short supply.[2]

In earlier recommendations to the Government, the Advisory Council advocated a phased-in approach, so that the private sector could benefit from the wisdom gained from implementation in the public sector. We consider the approach whereby there are two pay equity acts--one for the public and another for the private sector--to be fundamentally misconceived. The Advisory Council regards equal pay for work of equal value as a basic labour standard applicable to all workers. Pay equity in the private sector can be accommodated in the same legislation which guides the public sector.

The Advisory Council therefore urges the Government to amend the current Pay Equity Act so that all Nova Scotian women will share the same freedom from systemic and historic wage discrimination. Newly defined responsibilities of the

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[1] Remick, H. (Ed.) Comparable Worth and Wage Discrimination, Philadelphia: Temple University Press, 1984,

[2] Ontario Advisory Council on Women's Issues, A Submission to the Ontario Government on Pay Equity, 1986

Pay Equity Commission will provide it with the authority to re-address the pay equity process in the public sector and to ensure that all women working in this sector enjoy the right to equal pay for work of equal value.

The Advisory Council recommends:

1) that the Government of Nova Scotia amend the current Pay Equity Act so that there is one law for all sectors of the economy;
2) that the legislation should regard pay equity as a basic labour standard, equally accessible to individuals and larger job classes;
3) that the legislation should ensure that implementation procedures are broadly defined so that equal pay for work of equal value is achieved.

COVERAGE

The current pay equity legislation has defined those who are eligible for coverage so narrowly that many women do not qualify, even though they work in low-paying, female-dominated jobs. In the public sector, pay equity applies only to women who do the same job as at least nine other people, 60 percent of whom are women, and where there exists a male-dominated job of the same make-up with which to be compared. Why do these women enjoy wage increases while their co-workers in smaller job classifications, or in jobs without a male comparator group, do not?

The Advisory Council is concerned about the administrative restrictions that seriously limit the extent of equal pay coverage. In our view, all limitations on coverage are contrary to the principle of equal pay for work of equal value as a basic labour standard. Comparisons must be made according to job content and should apply wherever pay inequalities based on sex exist.

Universal Coverage

The Advisory Council is adamant that pay equity should apply equally to all employers in all sectors. Fifty percent of women in Nova Scotia work in firms with fewer than 20 employees.[3] There is no justification for excluding smaller employers from the process. We challenge the Government to identify the number of Nova Scotian establishments with labour pools that satisfy the incumbency criteria as they now stand.

Restrictive incumbency requirements are an invitation to abuse. Employers may manipulate their labour pools to avoid eligibility. Hiring and firing decisions will be made with a view to the effect on eligibility for pay equity. Large firms may feel unjustly treated if their smaller competitors are not subject to a comparable duty to increase women's wages. All these concerns are unnecessary complications that have nothing to do with pay equity.[4]

Lack of Male Comparison Group

The legislation allows that pay equity be applied only where there is a narrowly-defined male comparator group. With this restriction, many deserving women have already been denied pay equity in the public sector and many more will be affected in the private sector. This restriction particularly affects women in private, female-dominated industries such as health, child care, financial services, and tourism.[5] It is also likely to affect many women in a workplace where jobs do not have direct male comparators.

Two approaches may serve to address this issue. The first is by plotting a wage line using a broad and representative range of male-dominated and non-dominated job

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[3] Statistics Canada, The Labour Force, Catalogue 71-001

[4] Ibid.

[5] Ontario Pay Equity Commission, Report to the Minister of Labour, 1988

classes. Female-dominated jobs that do not have a direct male comparator will be compared to the wage line.

Alternatively, proportional value allows for proportional comparison between jobs which may not be equal in value. For example, a female job with an evaluated point value of 40 may be compared with a male job having a point value of 80. In this circumstance, pay equity is achieved when the female job is earning 50 percent of what the male job does. This option does not require as many job evaluations to be done as would be necessary to construct a wage line, but shares with the wage line a similar rationale.

Amendment to the Labour Standards Act

Another alternative offering some equity is amending the existing "equal pay" provision of the Labour Standards Act to include "work of equal value" and specific reference to the composite test to determine value. By so doing, the Government would render equal pay for work of equal value as a minimum employment standard in all employment contracts.

The Advisory Council recommends:

4) that pay equity should apply to all sectors and to all jobs according to job content.
5) that there should be no exclusions or delays for smaller employers.
6) that legislation should permit pay equity comparisons between comparable-value jobs, on wage lines or by proportional value.
7) that the Labour Standards Act should be amended to include equal pay for work of equal value.

DEFINITIONS

From the public sector experience, the lesson has been learned that certain definitions are severely restricting the

scope and effect of the Act. The Advisory Council proposes that the purpose of the legislation should not be to restrict access to pay equity, but rather to ensure it for the greatest number of working women.

Purpose

The current legislation defines its purpose as "to increase the pay of employees in classes which are predominantly female where it is determined, by the process set out in this Act, that, by reason of sex discrimination, those employees are paid less that they should be."

The Advisory Council believes it imperative that this definition be changed. The purpose of this Act should be to eliminate historic, systemic pay discrimination against women. With a comprehensive definition of this nature, the processes set out in the Act will be considered methods for reaching this goal, but they will not set the parameters by which pay equity is defined.

Classification

The title of a job does not always describe it adequately. For this reason, the Advisory Council considers the requirement that a classification includes "a position or group of positions that have the same classification title" to be an artificial constraint in the evaluation process. It is recognized that such a distinction might be useful in a bureaucratic and unionized environment. However, in a broader application, the job title is not a helpful classification device.

Dominated Classes

The requirement that a dominated class must have at least 10 employees, 60 percent of whom are male or female, has proven to be unduly restrictive in the public sector, and will be even more so in the private sector. All women should enjoy

the right to pay equity. Even if only one male and one female are employed in a company, their jobs must be compensated equitably.

Establishment

The definition of establishment must delineate the area for comparison more generically than was necessary when only the public sector was targeted. The legislation must encourage the broadest definition of establishment while at the same time recognize corporate boundaries.

The Advisory Council does not see the need for geographic restrictions in Nova Scotia because of our province's small size and population. We recognize that a multi-unit company may pay different wages due to regional economic differences. Pay equity can easily be incorporated into this type of system using a proportional calculation for wage adjustments after the company-wide job evaluations are completed.

We recommend a corporate definition that extends to associated and related companies guided by common personnel and compensation policies. We foresee that the Pay Equity Commission will be called upon to make rulings on this issue because companies may make efforts to circumvent the legislation through reorganization and restructuring. The Commission should adhere to principles of good faith, common sense, and providing fair protection to women in its rulings.

Value of Job Content

We agree that the legislation should only establish the minimum requirements of job evaluation and that the actual procedure used should be the decision of a company's pay equity team. The minimum standards must clearly protect the integrity of an unbiased approach. These should include:

a) a single job evaluation system for the entire establishment
b) union or employee participation in the evaluation

procedure

c) prior training so that evaluators are capable of making sound judgments

d) gender bias-free determinations of factors and weighting

f) a validation process

Pay

The definition of pay currently used in the legislation meets our recommendation for a "total compensation" approach. It recognizes the extent to which nonwage benefits make up an increasing proportion of employee compensation, and the fact that men, in general, enjoy more benefits than women.

The Advisory Council recommends:

8) that definitions in the pay equity legislation should ensure the broadest possible coverage.

9) that the purpose of the Act should be to eliminate historic, systemic pay discrimination against women.

10) that there should be single incumbency for female and male job classes.

11) that job titles should not be considered in defining classifications or in evaluations.

12) that a corporate definition of "establishment" be developed that extends to related and associated companies that share personnel and compensation practices. The intent is to find the broadest possible application within a corporate definition. The Pay Equity Commission should play a pro-active role in determining when an establishment is attempting to circumvent the integrity of the pay equity process and it should have the power to set these parameters.

13) that job evaluation systems should adhere to minimum statutory standards, such as:

a) a single system be used in any establishment

b) union or employee participation in the evaluation

procedure

c) training so that evaluators are capable of making sound judgements

d) gender-neutral in design and application

e) gender bias-free determination of factors and weighting

f) a validation process

14) that "pay" should include wages and benefits.

PAY ADJUSTMENTS

The legislation should set forth standards as to how pay adjustments are to be implemented. These should ensure that pay adjustments are maintained and provide liability for back-pay awards as of the date when employers are legally required to begin adjustment payments.

The Advisory Council recommends:

15) that a date must be determined by which employers are legally required to begin adjustment payments.

16) that there should be no limit on back-pay awards after implementation is required.

MAINTENANCE

Fundamental to the concept of pay equity, in our opinion, is its ongoing nature. While a one-time, across-the-board evaluation process is essential to correct existing inequalities, so too is a maintenance stipulation. Employers must be required not only to adjust wages to end pay discrimination against female-dominated jobs but also to ensure that such inequalities do not creep back into their compensation systems. The maintenance requirement should be enforced through a combination of employee-originating complaints and pro-active investigation by the Commission.

The Advisory Council recommends:

17) that it must be the responsibility of employers that pay equity be achieved and maintained in their workplaces. Enforcement procedures should include employee complaints and pro-active investigation by the Pay Equity Commission.

INTEGRATED MODEL OF IMPLEMENTATION

The Advisory Council believes that pay equity can become a reality only by using more than one approach to eradicate systemic wage discrimination.

We hold strongly to the view that legislation should specify a universal, mandatory implementation scheme that provides time limits for proceeding through the process. Each establishment would be responsible for preparing, at the end of a two-year process, a pay equity plan that would be made available to the employees of the establishment and to the Commission. The plan should include the type of job evaluation system used, the jobs that were evaluated, the wage adjustments required, and the names of those who performed the actual evaluations. All plans would be subject to review and the establishment to spot checks by the Commission. At any time during the implementation process or afterwards, employees, employers and the Commission would have the right to lodge a complaint with the Commission.

Small Workplaces

It should not be necessary for smaller-sized firms to go to the expense of hiring an outside consultant in most cases. The Pay Equity Commission should develop pre-packaged evaluation systems that can be used by a firm's pay equity evaluation team. Staff members of the Pay Equity Commission should be trained to provide free consulting services to users of these evaluation systems. We do not envision the need for

great technical expertise because very often in small firms an educated and enlightened "ranking" system is sufficient.[6]

The Advisory Council recommends:

18) that pay equity legislation must provide for universal, mandatory implementation through the development of a pro-active pay equity plan within each establishment.

19) that legislation should provide for a complaint mechanism as a procedure of enforcement and maintenance.

20) that the Commission should have the right to monitor and review the pay equity process in each establishment.

21) that the pro-active stage be subject to interim time deadlines for selection of an evaluation system, selection of the evaluation team, determination of job values, and adjustment of wages.

22) that the Commission be empowered and granted the resources to compile statistics, to provide information on pay equity plans, to educate, to research the means by which systemic discrimination may be eradicated, and to act as a conciliator or mediator.

23) that the Pay Equity Commission create pre-packaged job evaluation systems for smaller firms. These systems should be simple to use, employing a "ranking" or other system developed by the Commission for the purpose. The Commission should also provide the training required to use these systems.

ENFORCEMENT MECHANISMS

The complaint-based system has been clearly inadequate in fighting systemic discrimination.[7] An individual complaint

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[6] Ontario Pay Equity Bureau. Discussions on the telephone.

[7] Op cit.

process will not allow the Pay Equity Commission to allocate its time and other resources according to the greatest need. Lack of complaints may lead to the mistaken conclusion that no inequities exist. If more serious violators are not subject to scrutiny, individual employers against whom complaints are filed may regard themselves as being unfairly treated.[8] It is unjust to leave the fight against historic and systemic discrimination to those brave individuals who are willing to lodge a complaint. This is the fight that the Government must undertake.

The Advisory Council believes that pay equity legislation should include comprehensive enforcement mechanisms so that a "systemic approach to enforcement"[9] can be developed. The main objective of a systemic approach is to change ongoing practices and policies to end further discrimination.

Contract Compliance

Contract compliance is another effective enforcement strategy. Borrowing from the Federal Contractors' Program, the legislation would set guidelines whereby private sector establishments must show that job evaluation schemes and plans for implementing equal pay are in place. Contract compliance is not an alternative to other recommendations, but would provide a double check for ensuring enforcement and maintenance in the complex and dynamic business sector.

Establishment of Pay Equity Tribunal

Most administrative bodies provide for a two-tiered approach; accordingly, the Pay Equity Commission would be involved with administration, education, and mediation, and a

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[8] Black, W. Employment Equality: A System Approach, Human Rights Research and Education Centre, University of Ottawa, November, 1985.

[9] Ibid.

separate and impartial tribunal would hear and settle disputes. The separation of these duties is important for impartiality in both fact and appearance. This separation of roles frees the Commission to pursue without hindrance its pro-active initiatives. The tribunal should include an employee representative, an employer representative, and a chairperson decided upon by these two representatives.

The Advisory Council recommends:

24) that the Commission be empowered with comprehensive enforcement mechanisms such as:
   a) the right to conduct investigations, audit reports and plans, and conduct research
   b) the right to lay complaints
   c) acess to funds to mount education campaigns to change ongoing practices and policies to end future discrimination

25) that a contract compliance system, similar to the Federal Contractors' Program, be established so that only companies that are implementing and maintaining pay equity will be able to enter into contracts with the provincial government.

26) that legislation provide for the establishment of a Pay Equity Tribunal in addition to the Pay Equity Commission.

27) that the Pay Equity Tribunal be an independent quasi-judicial body with the power to make binding orders pertaining to the enforcement of the Act.

28) that the Pay Equity Tribunal be a tripartite body representing the interests of employers and employees, with an independent chairperson

EMPLOYMENT EQUITY

The Advisory Council is aware that even the best pay equity legislation will affect only part of the existing wage

gap. The Council has been an active supporter of comprehensive employment equity measures. These include affirmative action legislation, contract compliance programs, better protection for part-time and casual employees, improved access to affordable daycare, and expanded education and job training opportunties for women entering the workforce.

The Advisory Council recommends:

29) that the Government should act to eliminate the wage gap between working men and women through additional measures to support pay equity legislation. These should include:
   a) employment equity legislation
   b) contract compliance programs
   c) better access to affordable daycare
   d) expanded education and job training opportunities
   e) better protection for part-time and casual workers

COMPREHENSIVENESS

It is widely acknowledged, by employers, employees, and unions involved in the process, that the current pay equity legislation has been a great disappointment. While it may have seemed to offer the potential for wage adjustments to women in the public sector whose work is undervalued, this in practice did not happen. It seems obvious that restrictive and unnecessary "rules" were written into the legislation not for expediency, but to keep the cost to the public purse down.

The Government of Nova Scotia has only to look at the experiences of Manitoba and Ontario for hard proof that many female-dominated jobs in the civil service and broader public services are undervalued. These include jobs that were not part of the process in Nova Scotia because they did not meet the incumbency requirements. By refusing to even evaluate many of these jobs, the Government is knowingly perpetrating discrimination against women. The Advisory Council asserts

that it is not the place of women to subsidize government and the broader public sector.

The Civil Service and the broader public sector both receive most of their income from the taxpayer. The Government is redistributing tax money unfairly through salaries that compensate men at a higher rate than women for comparable worth jobs. Women as taxpayers expect more from government. They deserve a government that defends their right to equality. The government must set the example for the rest of the economy.

The Nova Scotia civil service pay equity process resulted in 87 percent of the evaluated female-dominant jobs receiving wage increases. This process, inadequate as it was, provided a stunning indication of the magnitude of the inequalities in the system.

The existing process has been even less fair to the broader public sector. The results of the pay equity process in hospitals, school boards, crown corporations, the municipal sector, and universities will be less comprehensive because fewer female-dominated groups will qualify for evaluation due to lack of numbers or lack of a male comparator group. For comparison purposes, substantial wage adjustments were required in these sectors in Manitoba and Ontario.

The Advisory Council is convinced that one Act covering both the public and private sector is required to assert the principle that work should be valued for its contribution to the working establishment and not by whether it is performed by a man or a woman. These recommendations are designed to apply to both the private and public sectors.

While it would be desirable that the public sector pay equity process be re-done, we acknowledge the improbability of that occurring. Instead, remedial actions are called for. The recommendations below are consistent with those noted above; they will further define the powers and duties of the Pay Equity Commission.

The Advisory Council recommends:

30) that using its power to lodge complaints, the Pay Equity Commission should do so against all public sector employers who have been included in the pay equity process. These employers will be required to evaluate all female-dominated jobs that were not previously evaluated, based on the criteria of single incumbency. Male comparators will be found who are direct comparators, by proportional value or by a wage line. It will not be necessary to re-evaluate a job unless a specific complaint is made.

The Employer

The Government of Nova Scotia funds or controls many public sector organizations. It is the level of funding that profoundly affects the level of wages in those organizations.

Because of this close relationship, the Advisory Council believes that those establishments that receive the majority of their funding from the Government should be considered part of the civil service for evaluation purposes. Wage adjustments would be scaled proportionally to the individual workplace.

Municipal enterprises would enjoy the same relationship with the municipalities that fund them. In all cases, the Pay Equity Commission will have the authority to make the final determination concerning who is the employer, barring an appeal to the Pay Equity Tribunal.

The Advisory Council recommends:

31) that where the provincial government funds at least 50 percent of a public sector organization, female-dominated jobs in that organization that do not have a male comparator will be compared to male jobs in the Nova Scotia Civil Service. Wage adjustments will be scaled proportionally to wages in the immediate workplace.

32) that where a municipality funds at least 50 percent of the budget of a municipal enterprise, female-dominated jobs in that enterprise that do not have a male comparator will be compared to male jobs in that municipality. Wage adjustments will be scaled proportionally to wages in the municipal enterprise.

33) that the Pay Equity Commission have the power to make final determinations concerning when inter-organization comparisons can be made in the public sector, subject to appeal to the Pay Equity Tribunal. Guidelines should include that 50 percent or more of the organization's budget is supplied by provincial or municipal taxpayers.